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OFFICE OF PETITIONS

In re Application of	:	
Philip C. Gevas, et al.	:	
Application No. 10/762,226	:	DECISION ON PETITION
Filed: January 20, 2004	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 1102865-0031 CON	:	

This is a decision on the petition under 37 CFR 1.78(a)(6), filed July 26, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of prior-filed provisional Application No. 60/011,411, filed February 8, 1996.

The petition is **DISMISSED AS MOOT**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000.

Petitioner has submitted on July 26, 2004, an amendment to add a new paragraph to the specification immediately following the title to include a reference to prior-filed provisional Application No. 60/011,411, filed February 8, 1996.

The instant pending nonprovisional application was filed on January 20, 2004, and was pending at the time of filing of the instant petition. While a reference to the prior-filed provisional application was not included in an ADS or in the first sentence of the specification following the title, reference nevertheless was made in the transmittal letter filed with the above-identified application.

The current procedure where a claim for priority under 37 CFR 1.78(a)(6) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would

have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR 1.78(a)(5). However, on the other hand, if the USPTO does not note the claim for priority to the provisional application in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR 1.78(a)(6).<sup>1</sup> In the instant case, the Office noted the claim for priority of provisional Application No. 60/011,411 in the transmittal letter filed with the application, as shown by its inclusion on the filing receipt.

In view of the above, the \$1330 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course. The \$770 basic filing fee is being charged to counsel's deposit account since it is noted that the fee, required by the Notice to File Missing Parts of Nonprovisional Application mailed May 6, 2004, was not charged as authorized in the general authorization contained in the "Response to Notice to File Missing Parts..." filed September 27, 2004. Receipt is acknowledged of the requisite surcharge, two-month extension of time fee and the sequence listing on September 27, 2004.

This application is being forwarded to Technology Center AU 1614 for consideration by the examiner of the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(6) for the benefit of prior-filed provisional Application No. 60/011,411, filed on February 8, 1996.

Any questions concerning this decision on petition may be directed to Sherry Brinkley at (571) 272-3204. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.



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Office of Petitions  
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<sup>1</sup> Note 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.